TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted]286

CLARK MOTOR COMPANY, APPELLANT,

vs.

W. STANLEY SMITH, COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN

FILED FEBRUARY 1, 1926

(31,660)

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SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1926

[fols. 1 & 2] [Caption omitted]

[fols. 3 & 3½] **IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN**

In Equity

CLARK MOTOR COMPANY, Plaintiff,

vs.

W. STANLEY SMITH, Commissioner of Insurance of the State of Wisconsin, Defendant

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed December 16, 1925

Clark Motor Company, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it entered on the 18th day of November, 1925 denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this 15th day of December, 1925.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys for said Petitioner.

The foregoing appeal is allowed.
Dated December 16, 1925.

C. Z. Luse, District Judge.

[File endorsement omitted.]

Due service of within appeal admitted this 16th day of December, 1925.

Herman L. Ekern, by T. L. McIntosh, Attorneys for Defendant.

[fols. 4-5½] Bond on appeal for $500.00; approved and filed December 16, 1925; omitted in printing.

[fols. 6-8½] Præcipe for transcript of record, with service, omitted in printing.

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed August 3, 1925

To the Honorable the Judge of the District Court for the Western District of Wisconsin:

The plaintiff above named for its bill of complaint herein respectfully shows to this Honorable Court:

(1) Plaintiff, Clark Motor Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and its principal office and place of business is located in the city of Milwaukee, County of Milwaukee, and State of Wisconsin; and said corporation is a citizen of said State of Wisconsin.

(2) Defendant, W. Stanley Smith is the duly appointed, qualified and acting Commissioner of Insurance of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin, and of the Western District of Wisconsin.

(3) The ground upon which the jurisdiction of this Court depends is that this action arises under the constitution and laws of the United States.

[fol. 10] (4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3,000).

(5) Plaintiff is engaged in the business of buying from the Chrysler Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, Chrysler cars and parts for same and selling the same at wholesale to dealers in Milwaukee and surrounding territory in Wisconsin, and also at retail to buyers of automobiles in said territory. Said Chrysler Sales Corporation has its principal place of business in Detroit, Michigan and buys the entire output of Chrysler cars from the Chrysler Corporation and resells same to distributors such as plaintiff in this action, said distributors being very numerous and located and doing business in all parts of the United States. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the Wisconsin public and have been and are being purchased by said public in rapidly increasing numbers. Plaintiff buying direct from the Chrysler Sales Corporation is known as a distributor and dealers who buy from plaintiff and sell only at retail are known as dealers. Such dealers who buy from plaintiff are not employed by plaintiff or the Chrysler Sales Corporation but are customers of plaintiff. Said dealers who buy from plaintiff are numerous and the retention of their business is of great value to plaintiff and its loss or impairment would cause great financial loss to plaintiff greatly exceeding $100,000. The extent of such loss could not be measured nor be compensated by damages. Plaintiff has expended large sums of money and much time and service in securing said dealers [fol. 11] who buy Chrysler cars from plaintiff and sell to the public in said territory. Plaintiff has acquired and built up a valuable business with said dealers which is a very valuable property right and is dependent on the retention of said dealers as customers and on the retention of the good will of said dealers and on giving satisfaction to the buying public.

(6) A very large percentage of automobiles of all makes sold to the American public are and for a considerable period of time have been sold under plans whereby the purchasers at retail pay only part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in installments.

Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles on time payment plan. The [fol. 12] charges of finance companies have not been uniform and have been generally high. The placing of insurance has been largely controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. In many instances local dealers have become connected with finance companies sharing in profits made by such companies. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. For a long time it has been apparent to plaintiff and others engaged in the automobile business that a great service would be performed to buyers of cars if a uniform insurance protection and the benefit of a moderate and uniform financing charge applicable to all retail time purchasers could be obtained. The Chrysler Sales Corporation was the first automobile company to work out and announce arrangements for securing this result.

(7) On or about the 16th day of June, 1925, said Chrysler Sales Corporation and the Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South

Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the State of Michigan, and maintaining a duly licensed general agency in the State of Michigan, but not licensed to do business in the State of Wisconsin, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the State of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insur- [fol. 13] ance. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the name of Chrysler Sales Corporation for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car and others interested from being protected under said policy. Only said Chrysler Sales Corporation pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Said Chrysler Sales Corporation having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uni-

form finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on [fol. 14] time, the price is the same, except for said finance charge of eight per cent on unpaid balance if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by plaintiff with said Palmetto Fire Insurance Company, and neither the plaintiff herein nor any other distributor or dealer can do anything to prevent this insurance coming into effect. For the protection of purchasers who may desire to themselves take out insurance giving them protection other than that provided by said contract or policy, said policy provides that if such purchaser takes other insurance, the insurance under said policy shall be merely excess insurance.

(10) Plaintiff is not an agent of the Chrysler Sales Corporation. Plaintiff is conducting its own business. The course of the business is as follows: Plaintiff buys Chrysler cars from said Chrysler Sales Corporation for a cash price computed as follows: List prices less a given discount, plus war tax and certain delivery charges. From time to time as occasion may have required changes have been made in amount of list prices, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. Plaintiff pays the freight and charges an increased price to dealers because of having paid said freight or otherwise taken care of transportation of cars to territory in which plaintiff sells cars as above stated. Plaintiff sells to dealers in said territory for cash at a price arrived at by deducting a certain discount from the list price and adding freight or transportation charge, war tax and delivery charges. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight or transporta- [fol. 15] tion charges, war tax, and delivery charge. The

retail dealer reports to Chrysler Sales Corporation the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Thereafter said retail purchaser and other parties having an interest in the car receive by mail from said insurance company from its office in Detroit certificates which state the coverage afforded by said Michigan insurance contract. On July 1, 1925, the delivery charge on all models of Chrysler cars was increased and fixed at a certain amount for each type of Chrysler car.

(11) Neither plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory above referred to takes any part in the writing or placing of said insurance under said Michigan contract. Neither plaintiff nor any such dealer solicits or receives or transmits any application for insurance. No arrangement that plaintiff or any dealer should make with any purchaser can change the protection afforded by the policy or prevent it from taking effect. Neither does plaintiff or any such dealer solicit, demand, receive or transmit any premiums. Plaintiff and every such dealer must pay for each car on receipt of same the full price as above set out and cannot get back any part of said purchase price paid for the car. What plaintiff and each such dealer receives from any purchaser upon the sale of a car is the absolute property of plaintiff or such dealer. It is the proceeds of the sale of its or his own property which has already been paid for. Neither plaintiff nor any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise any part of such purchase price. Neither plaintiff nor any such dealer acts in any manner in behalf of or as an agent or employe of said Palmetto Fire Insurance Company. Neither the plaintiff nor any such dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail pur-[fol. 16] chaser by said Michigan contract.

(12) Chrysler cars are now being sold in Wisconsin in large numbers by plaintiff and dealers who buy from plaintiff and others. The retail purchasers thereof and other parties interested in said cars wherever said purchasers or parties may reside are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Wisconsin has ruled and announced

to the plaintiff and to said Chrysler Sales Corporation, and to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchaser becomes protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Wisconsin, and that plaintiff and every Chrysler distributor or dealer selling Chrysler cars in Wisconsin is violating the criminal and civil laws of said State, including among others the following Statutes: Sections 4575s, 209.04; 209.05; 203.08; 201.44, Wisconsin Statutes, 1923 and other statutes not specified by defendant. Defendant has threatened and is now threatening to procure the arrest and conviction of every Chrysler distributor or dealer selling in Wisconsin any Chrysler car the purchaser of which is or may be protected under said insurance contract made between Chrysler Sales Corporation and Palmetto Fire Insurance Company. Plaintiff and a number of dealers buying Chrysler cars from plaintiff as hereinbefore stated have sold a considerable number of Chrysler cars pursuant to the course of business hereinbefore described since July 1, 1925, the retail purchasers being protected by said Michigan contract of insurance as hereinbefore alleged and defendant threatens to immediately institute both criminal and civil proceedings against plaintiff and said dealers on account thereof and on account of any future sales so made. It is not possible for plaintiff or any such dealers to sell Chrysler cars at all without the retail purchaser and other [fol. 17] parties interested receiving such insurance protection. Plaintiff and said dealers are now in a position where they must either abandon the sale of Chrysler cars, thereby sustaining large and irreparable loss of business and good will, and their investment in advertising and in developing a market for Chrysler cars, or continue to sell as hereinbefore described. Defendant has sent out and is giving out and publishing letters and communications stating that said Chrysler Sales Corporation and its distributors and dealers in Wisconsin, including the plaintiff and said Palmetto Fire Insurance Company, are violating the law of Wisconsin by virtue of sales of cars as hereinbefore alleged. By and as the result of said threats and communications published by defendant, dealers and prospective retail buyers of Chrysler cars in plaintiff's said territory in Wisconsin are being harassed and intimidated and brought

into a state of uncertainty seriously and irreparably injurious to plaintiff's business. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and said threatened acts of defendant, plaintiff's business will be destroyed or irreparably damaged and plaintiff will suffer immediate and irreparable loss and damage before the matter can be heard on notice. Unless said restraining order is followed by temporary injunction against said acts and threatened acts pending this action and until final decree irreparable loss and damage will result to plaintiff before the merits of this action can be finally determined. Plaintiff had no adequate remedy at law. The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The actions threatened by defendant would result in multiplicity of prosecutions which would irreparable damage and injure the sale of Chrysler cars in plaintiff's said territory and irreparably injure the good will of plaintiff and the value of plaintiff's business. Unless immediately restrained defendant will cause the arrest and prosecution of plaintiff and said dealers and of others [fol. 18] under the statutes hereinbefore mentioned which impose extremely severe penalties and forfeitures. The result of said arrests and prosecutions would be to practically destroy plaintiff's business in Chrsyler cars and plaintiff's property and good will hereinbefore referred to, irrespective of the final outcome of said arrests and prosecutions and irrespective of the final outcome of this action. The penalties and forfeitures under said statutes, if said statutes can and do prohibit the acts of plaintiff and said dealers hereinbefore mentioned, apply to each sale made by plaintiff and each such dealer as a separate offense and in the aggregate would reach such a large sum as to preclude a test of the validity of said statutes by awaiting the threatened arrests and actions.

(13) If and to the extent that the laws of the State of Wisconsin purport or may be construed to prohibit plaintiff and other distributors and dealers in Chrysler cars in Wisconsin from making sales in the manner hereinbefore set forth of automobiles the retail purchasers of which shall be protected by said contract in Michigan, or to subject plaintiff and said dealers and distributors to criminal

prosecution and punishment or to forfeitures by reason of sales so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by Chrysler Sales Corporation in Michigan with Palmetto Fire Insurance Company, and the protection afforded by same to purchasers of Chrysler cars in Wisconsin and others interested in said cars, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of depriving the Plaintiff and said [fol. 19] customers of plaintiff of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said dealers the equal protection of the law, and as attempting to regulate, probibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Wisconsin. For the same reason, the said acts and communications, rulings and threats of defendant as Commissioner of Insurance of the State of Wisconsin as hereinbefore alleged are likewise a violation of the Constitution of the United States.

(14) There are many persons in Wisconsin who have sold and are selling Chrysler cars in the same manner as plaintiff and dealers of plaintiff as hereinbefore described and who are affected and will be affected by the acts and threatened acts of defendant hereinbefore referred to in the same manner as plaintiff and whose situation as to the subject matter of this action is substantially the same as plaintiff's. Said parties are so numerous that filing a sep-rate bill for each or joining them in a bill, or bringing them all before the court, is impracticable. This action is brought for the benefit of plaintiff and all such parties so similarly situated.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court the relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this [fol. 20] bill of complaint, but not under oath, answer

under oath being hereby expressly waived, and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against any distributors of or dealers in Chrysler cars in Wisconsin based on or purporting to be based on or by reason of said contract of insurance between said Chrysler Sales Corporation and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Wisconsin or in respect to property situated in Wisconsin by reason of the existence of said contract of insurance or the performance thereof or the sale of Chrysler cars in Wisconsin, or based on or purporting to be based on or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Wisconsin as described in detail in this bill of complaint and from interfering in any other manner with it or their said business as aforesaid and from issuing, declaring or publishing any statement official or otherwise that plaintiff or any of said distributors or dealers is violating any law of the State of Wisconsin by virtue of any of the acts or transactions set forth herein. Plaintiff further prays that pending the final hearing and determination of this action a temporary injunction be granted restraining defendant and his successors in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such and other and further relief as may be equitable and proper in the premises.

[fol. 21] Wherefore plaintiff prays that a writ of subpœna issue herein, directed to the above named defendant, W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, commanding him on a day certain to appear and answer to this bill of complaint.

Clark Motor Company. Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 22] *Duly sworn to by George W. Brown. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 23] EXHIBIT "A" TO BILL OF COMPLAINT

Non-valued Fire, Theft & Transportation Form No. A-9652, Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery, and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Phillipine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: $ As specified: Premium: As agreed.
Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. Dollars ($—.)

Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This in formation not required by insurer.
2. The following is the description of the automobiles: Information not required except as hereinafter specified.
3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.
4. The uses to which the automobile described are and will be put, are: This information not required by insurer.
5. The automobile described is usually kept in garage, located: This information not required by insurer.

Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 24] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or

vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in the case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other

of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by way of [fol. 25] loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deduction cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured name therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occur-ing directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the

benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to be the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is [fol. 26] demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 27] "Exhibit A" to Exhibit A to Bill of Complaint

Witnesseth, for valuable consideration, it is agreed that the following rider shall be attached to and form a part of Policy No. A9652 of the Palmetto Fire Insurance Company,

herein called Insurer, and shall supersede and take the place of anything to the contrary in the other conditions and provisions of this policy.

I. Definitions

The following words, whether singular or plural, unless the context otherwise requires, shall mean—

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation, of Highland Park, Mich., its successors and assigns.

Commercial Credit shall mean Commercial Credit Company, a Delaware Corporation of Baltimore, Md., its successors and assigns including its Branches and Sub-Branches.

Affiliated companies shall mean Commercial Credit Corporation, a New York Corporation of New York, N. Y.; Commercial Credit Company, Inc., a Louisiana Corporation of New Orleans, La.; Commercial Credit Trust of Chicago, Ill., a common law trust with trust deed on file at The Old Colony Trust Company, Boston, Mass., and shall also include any and all other corporations, common law trusts, firms or companies with which Commercial Credit is now or may become affiliated through stock ownership or otherwise; and all the branches and sub-branches of such affiliated Companies through which they may operate in financing the retail sale or lease of Chrysler Cars, and their respective successors or assigns.

Other finance companies shall mean banks, trust companies, finance or credit companies, corporations, co-partnerships, common law trusts, dealers, individuals and other organizations, other than Commercial Credit or Affiliated Companies, who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial and passenger automobiles to be sold or distributed by Chrysler and which are or may be sold or distributed by Chrysler and which are or may be manufactured by Maxwell Motor Corporation, a West Virginia Corporation, of Detroit, Michigan, its successors or assigns.

Finance shall mean to purchase or loan upon or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and

given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

Dealer shall mean persons, firms, or corporations selling or leasing or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or lease Chrysler cars at retail on deferred payments.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the [fol. 28] deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: July 1, 1925 to June 30, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailment contracts, other instruments, reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the hazards provided for in policy and/or certificates.

II. Purpose

Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy.

III. Assured and Coverage.

Insurer does hereby insure Chrysler, Commercial Credit, and all Affiliated Companies, other Finance Companies, Dealers and Purchasers as their interest may appear against the hazards mentioned in the printed part of this policy to Chrysler cars but in no event shall this insurance cover loss or damage by confiscation of Chrysler cars used in violation of any liquor or prohibition statutes.

All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance.

All parties covered hereunder shall be protected and be considered parties to this policy with the same force and effect as if they severally accepted the same, upon the acceptance of this contract by Commercial Credit and Chrysler.

Coverage hereunder and under said Certificates shall be for one hundred (100%) per cent of the list price of each Chrysler car covered hereby, f. o. b. Detroit, on date of purchase or lease of same by purchaser, including standard [fol. 29] equipment but exclusive of extra equipment and accessories, but in no event shall the Insurer be liable upon loss to or of any Chrysler car for an amount in excess of the actual cash value thereof at the time of such loss.

Coverage hereunder and under Certificates shall be automatically effective from the date on which (during the term of this policy) each Purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided that in every case where a note and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such note and/or security instruments: and provided further, that no Chrysler car shall be insured hereunder which shall have been in possession or in transit to any dealer or distributor on July 1, 1925, and which shall not have been included in any detailed report provided for in Paragraph VII hereof.

It is expressly agreed that all Chrysler cars shall be automatically covered as provided herein, notwithstanding the failure or omission to apply for a Certificate or the failure or omission to issue a Certificate or the failure or omission to report any Chrysler car as required herein. No act or omission to act by any purchaser or any of the other insured hereunder shall vitiate or in any manner effect the indemnity or coverage of the other parties insured hereunder not responsible for such act or omission to act, it being the intent that only parties responsible for such act or omission to act shall suffer thereby.

Anything herein to the contrary notwithstanding, is *is* expressly agreed that no Chrysler car shall be insured hereunder which does not at the time when the insurance thereon would otherwise become effective hereunder, carry a Class A Rating for fire insurance assigned by the National Board of Fire Underwriters, or is not continuously equipped with a locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage on Chrysler cars shall not be vitiated or affected because such Chrysler cars are operated across the border of the United States into the territory of the Government of Mexico.

The insurance effected hereby shall be deemed to have been placed with Insurer through such insurance brokers as Commercial Credit may from time to time designate.

IV. Certificates

Insurer shall issue certificates to purchaser substantially in the form attached hereto which certificates and insurance evidenced hereby shall not be subject to cancellation by either party. If Chrysler cars are financed, there shall be issued upon request a duplicate of such certificate to Commercial Credit, Affiliated Companies or Other Finance Companies financing such Chrysler cars.

V. Transfers

If any original purchaser should transfer his interest in [fol. 30] any Chrysler car insured hereunder and should mail a notice of such transfer, together with his certificate

and $1.50 to Insurer, said insurance coverage shall continue for the unexpired term originally insured so as to protect transferee of original purchaser's interest, and Insurer shall issue new certificate for such unexpired term to transferee; provided, however, that if any such Chrysler car has been financed the consent in writing of Commercial credit, Affiliated Companies or Other Finance Companies financing the same shall first have been obtained to such transfer.

VI. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made from such other insurance of all amounts owing on any note for a Chrysler car financed within 90 days of the filing of a claim for loss. Insurer shall advance the amount of its liability hereunder to the assured authorized to receive payment of the loss as a loan without interest, the payment of which shall be conditioned upon, and only to the estent of, any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its Liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest instead of a payment of a loss, the repayment of which to Insurer shall be conditioned upon and only to the extent of any recovery from purchaser by the party to whom such loan has been made by Insurer; if any action is brought against Purchaser at the request of Insurer, Insurer shall pay all attorneys' fees, expenses and costs of such action.

If any claims or legal action should be made or commenced against Chrysler, Commercial Credit, Affiliated Companies or other Finance Companies by purchaser arising out of the refusal of Insurer to pay any loss under this policy or certificate, Insurer shall defend any such claim or action and pay all attorney's fees, costs and expenses incurred and or judgments recovered in any such claim or action.

VII. Reports

At any time or from time to time during the term of this policy Chrysler shall send original detailed reports to Commercial Credit and a duplicate thereof to Insurer by mailing the same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for account of Insurer, of such Chrysler cars, with models and serial numbers thereof as were in the possession of or in transit to its distributors and or dealers and unsold as of July 1, 1925, and on which insurance is desired hereunder.

Chrysler shall send an original report to Commercial Credit and a duplicate thereof to Insurer by mailing same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, on or before the 15th day of each month beginning with the Month of August, 1925, for shipments during July, 1925, and ending with the month of July, 1926, showing separately the number of all [fol. 31] Chrysler 4 Cylinder, 6 Cylinder and Commercial cars shipped to its dealers and distributors throughout the United States during the preceding month, which Chrysler cars may be sold at retail in the future and then may become subject to insurance hereunder; said reports shall show the number of Open and Closed Chrysler 4 Cylinder, Open and Closed Chrysler 6 Cylinder, and Commercial Chassis and Commercial Cars with Bodies, with the serial and motor numbers respectively, thereof.

Chrysler further agrees to submit such other information as Insurer or Commercial Credit may from time to time reasonably require regarding Chrysler cars that are or may become covered by Insurance hereunder and to permit Insurer or Commercial Credit from time to time to check its reports against those of Chrysler in regard to such Chrysler cars.

VIII. Premiums

Agreed premiums are to be paid by Chrysler for insurance hereunder and shall be paid by Chrysler to Commercial Credit or to any insurance broker designated by Commercial Credit on or before the 15th day of each month, beginning on August 15, 1925, and ending on July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding month,

and insured hereunder, and a report thereof in detail shall accompany such remittance of premiums.

Commercial Credit shall on or before the 25th day of each month remit or cause the insurance brokerage concern designated by it to remit said insurance premiums to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, and guarantees the payment of such premiums.

Payment of the agreed premiums hereunder made by Chrysler to Commercial Credit or to any insurance broker designated by it for that purpose shall be considered as payments made to the Insurer hereunder and the failure of Commercial Credit or of any such broker to remit such payments to Insurer shall not affect the insurance effected hereby or the validity of any certificate issued hereunder, or the rights of Chrysler hereunder.

IX. Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of any Chrysler car has been financed in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or Other Finance Companies or Dealers financing the same for the account of all parties as their respective interests may appear.

X. Examination

All parties insured hereunder shall submit to an examination under oath by any person named by Insurer, and subscribe to same as often as shall be required, and shall produce for examination all books of accounts, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage upon Chrysler cars hereunder, at such reasonable place as may be designated by Insurer or its representatives, and shall permit extracts and copies thereof to be made.

[fol. 32]

XI. Replacements

If Insurer should so select Chrysler will sell to Insurer new Chrysler cars at the wholesale list price, f. o. b. Detroit, on Date of loss, to replace any similar Chrysler car as to

which there has been filed a claim with the Insurer under this policy and/or certificate issued thereunder for total loss.

XII. Recording

Recording or filing of any security instruments shall not be required by Insurer but shall be optional with Commercial Credit, Affiliated Companies, Other Finance Companies and/or holders or owners of such security instruments.

XIII. Cancellations

This policy and certificates are not subject to cancellation by Insurer or any of the assured but this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that Certificates covering Chrysler cars insured as herein provided on any date up to and including the date of termination of this Policy shall be and remain in effect and protect all parties concerned until their respective expiration.

XIV. Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy shall be so executed, and all certificates shall be so issued, as to comply with the insurance laws of all of the States in which the purchasers reside.

XV. Michigan Law to Govern

Policy and certificates are to be construed and governed according to the laws of the State of Michigan.

To Commercial Credit Company.

To Chrysler Motor Corporation.

The foregoing rider will be attached to a standard form of automobile policy countersigned by our duly authorized representative in the State of Michigan and policy contract delivered to you completed.

Palmetto Fire Insurance Co., by Alexander & Alexander, Inc., General Agents. (Sgd.) W. F. Alexander, Vice-President.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 33] Form of Certificate

No. —

Purchaser's Original Copy

Non-valued Fire, Theft & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: —— ——; Address (No.:) —, (Street:) ——, (City:) ——, (State:) ——, and described as follows: Year: ——; Model (If truck, state ton-age); ——; Type of Body: ——; (Factory or Serial No.): ——; Motor No. ——, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon —— —, ——, and ending at Noon —— —, ——, Standard Time, for a sum not exceeding — dollars ($—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificates only to, Name: —— ——, Address: ——, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and $1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich, (Date:) —— — ——, by —— ——, Agent.

Provisions Required to be Stated by Law

[fol. 34] Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 35] way of loan of money equivalent of such loss or damage, which loan shall in no circumstance affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing

by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company of its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for

fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him the expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if ap- [fols. 36 & 36½] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then

existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fols. 37 & 38] Summons and sheriff's return, filed August 5, 1925, omitted in printing.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. E. HUTCHINSON—Filed August 22, 1925

STATE OF WISCONSIN,
County of Douglas, ss:

B. E. Hutchinson being first duly sworn, states: That he is an officer, to-wit: the Vice President and Treasurer of the Chrysler Sales Corporation, named in the complaint in this action; that he has read the complaint in this action and knows the contents thereof, and that to his knowledge the facts as therein alleged are true; that the contract of insurance between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company referred to in said complaint, was made June 16, 1925, at Detroit, Michigan, and was in the City of Detroit, Michigan, then and there duly signed, delivered and accepted by said Insurance Company and the Chrysler Sales Corporation and the Commercial Credit Company named and referred to in said contract.

That on August 4th, 1925, at the City of Detroit, in the state of Michigan, a further contract or insurance policy was entered into between said Palmetto Insurance Company and said Chrysler Sales Corporation, a copy of which is hereto attached marked Exhibit "A," and consisting of printed pages 28 to 59 inclusive, attached to and made a part hereof; that said contract or policy was signed, delivered and ac-

cepted at Detroit, Michigan, on August 4th, 1925, and was [fol. 40] then and there duly consented to by the Commercial Credit Company.

Affiant further says that the Chrysler Sales Corporation, has not, at any of the times mentioned in the complaint herein, nor at any other time maintained any agencies in the state of Wisconsin, nor had any office for the transaction of business in the state of Wisconsin, nor has it transacted or pretended to transact any business in the state of Wisconsin; but that the Chrysler Sales Corporation sells in Interstate Commerce all the cars sold by it. All cars are sold f. o. b. Detroit and are delivered to common carrier at Detroit, unless the distributor or dealer comes into Michigan and personally obtains the car there. However, cars sold to Michigan distributors and dealers are sold in Michigan.

That said Chrysler Corporation has many customers in the state of Wisconsin, but said customers buy in Interstate Commerce and that all cars sold by said Chrysler Sales Corporation are sold pursuant to contracts of sale involving and to be performed by shipments in interstate commerce;

That the agencies mentioned in the complaint are wholesale dealers who are simply customers of said Chrysler Sales Corporation; such wholesale customers are commonly known in the trade as "distributors;" the sub-dealers, who buy from the distributors are commonly known as "dealers;" each is in business for himself and not acting as agent for the Chrysler Sales Corporation.

All orders for cars from distributors and dealers in the state of Wisconsin to the Chrysler Sales Corporation are accepted or rejected at Detroit, Michigan, by the Chrysler Sales Corporation; the Chrysler Sales Corporation has never sold any car or cars in Wisconsin, but as stated in the complaint herein, has built up a large and valuable business with Wisconsin customers.

[fol. 41] Affiant further says that such business will be irreparably damaged unless a temporary injunction is granted restraining the defendant herein, as prayed in the complaint, pending this action, and that unless such temporary injunction is issued, any final decree which may be rendered in this action would be ineffectual.

That if the defendant is not now temporarily enjoined,

as prayed in the complaint, the injury to the Chrysler Sales Corporation in its business will be immediate and extremely serious.

Affiant further says that if the said laws of Wisconsin should be construed as claimed by the defendant herein, said laws must be held void as in conflict with the full faith and credit clause of the Federal constitution, and also as in violation of the Federal Constitution insofar as the same prevents and prohibits a state from imposing a burden on Interstate Commerce.

B. E. Hutchinson.

Subscribed and sworn to before me this 22nd day of August, 1925. Margaret M. Hoit, Notary Public, Douglas County, Wisconsin. My commission expires Nov. 27, '27. (Notarial Seal.)

[File endorsement omitted.]

[fol. 42] EXHIBIT "A" TO AFFIDAVIT OF B. E. HUTCHINSON

Non-valued Fire, Theft & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: $ As specified. Premium: As agreed.

Name and Address of assured: Chrysler Sales Corporation, Detroit, Michigan, and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates).

Amount of Insurance: As specified. Dollars ($—).

Warranties

The following are statements of facts known to and warranted by the Assured to be true and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 43] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for;

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or

estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment—It shall be optional with this company to take all or any part of the property at the apprasied value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company, and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation os assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 44] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured

shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be consider as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each

item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if ap- [fol. 45] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 46] EXHIBIT "A" TO EXHIBIT A TO AFFIDAVIT OF B. E. HUTCHINSON

Rider attached to and forming part of policy No. A-9657 of the Palmetto Fire Insurance Company herein called "Insurer." This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

I. Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individual and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To finance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 47] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

II. Assured and Coverage

The Insurer does hereby insure finance companies, dealers and purchasers as their interests may appear against [fol. 48] loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars ($100). The limit of liability of the Insurer for loss or damage to a Chrysler car with standard equipment insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or dam-

age to extra equipment and accessories insured hereunder, shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars ($75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, which ever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided, that in [fol. 49] every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

III. Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 50] thereby, shall not be subject to cancellation by

either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

IV. Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and $1.50 to the insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term to such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

V. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the [fol. 51] repayment of which shall be conditioned upon and be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request

of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

VI. Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

VII. Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the num-[fol. 52] ber of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodice with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show shipments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

VIII. Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or before the 15th day of each month beginning August 15,

1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such report shall be accompanied by an itemized statement.

IX. Payment of Losses

Payment of all losses claimed hereunder shall be made by purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis-
[fol. 53] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

X. Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

XI. Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

XII. Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

XIII. Cancellation

This policy and certificates are not subject to cancella-
[fol. 54] tions by Insurer or by any of the insured; this

policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the terms of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

XIV. Qualified Company.

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

XV. Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter, Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 55] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June, 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies, Asst. Treas. Palmetto Fire Insurance Company, by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by —— ——.

[fol. 56] Form of Certificate. No. —

Purchaser's Original Copy

Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: —— ——; Address (No.:) — Street:) ——, (City:) ——, (State:) ——, and described as follows: Year: ——, Model: ——; Type of Body (If truck, state tonnage): ——; Factory or Serial No.: —; Motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the Unitel States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon —— —, ——, and ending at Noon —— —, ——, Standard Time, for a sum not exceeding — dollars ($—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust compaines, persons, firms or corporations or others

having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to, Name, —— ——; Address: ——, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and $1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detriot, Michigan.

Countersigned at Detroit, Mich., (Date:) —— —, ——, by —— ——, Agent.

Provisions Required to be Stated by Law

[fol. 57] Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of and civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the

Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

Conditions

Limitation of Liability and Method of Determining Same.—The Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 58] way of loan of money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall

be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for

examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire [illegible], on request of the Assured or this Company such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item, and failing to agree shall submit their differences only, to the umpire. An ward in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

Payment of Loss.—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if appraisal [fols. 59 & 59½] is demanded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after

happening of the loss; provided that where such limitation of time is prohibited by the laws of the State where this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This Policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that it terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—August ., 1925

Proceedings in the Above entitled Cause Before Hon. Evan A. Evans, Circuit Judge, and Hon. C. Z. Luse and Hon. F. A. Geiger, District Judges, at Superior, Wisconsin, August 22, 1925.

It is understood and agreed between the parties that this stipulation shall apply to both cases (Chrysler Sales Corporation vs. W. Stanley Smith and Clark Motor Company vs. W. Stanley Smith).

It is agreed that it may be considered that the defendant has filed in the case of Clark Motor Company a verified answer containing substantially the same allegations as are contained in the verified answer in the case of Chrysler Sales Corporation which has just been served this morning.

It is also stipulated that there may be deemed to be added to the complaint in each case the matters set up in the affidavit of B. E. Hutchinson filed in each case today.

It is conceded that the Chrysler Sales Corporation is not licensed to do business in the State of Wisconsin.

Oral arguments were made following the foregoing.

[fol. 61] Reporter's certificate to foregoing paper filed January 5, 1926, omitted in printing.

[fol. 62] In United States District Court

[Title omitted]

Answer—Filed August 29, 1925

The defendant in the above entitled action in answer to the bill of complaint therein, admits, alleges and denies as follows:

(1) Defendant admits the allegations in paragraph 1 of said complaint.

(2) Defendant admits the allegations in paragraph 2 of said bill of complaint.

(3) Defendant denies the allegations in paragraph 3 of said bill of complaint.

(4) Defendant admits the allegations in paragraph 4 of said bill of complaint.

(5) Defendant admits the allegations in paragraph 5 of said bill of complaint, except that he has no knowledge of the value of the business done by said plaintiff or of plaintiff's threatened loss. Defendant therefore denies such allegations and for further answer to the allegations of said paragraph, defendant admits that the plaintiff has built up [fol. 63] valuable business by the method of dealing with the Chrysler Sales Corporation and by its advantage over other sales agencies because of said method of insuring the automobiles so sold and pretending and representing that such insurance was without cost to the purchaser, but defendant alleges the fact to be that such insurance was charged and paid for in the cost of such automobiles and that such method of insurance was wholly illegal and unlawful as it was carried on without a license and in violation of the laws of Wisconsin.

(6) In answer to the allegations in paragraph six of said bill of complaint, defendant alleges that he has no information as to the methods generally practiced in the sale of automobiles and the method of payment and insurance or whether said general methods or the methods adopted by plaintiff or the Chrysler Sales Corporation were the best or most advantageous, but defendant alleges that if plaintiff or the Chrysler Sales Corporation could and did by this subterfuge and method of transacting business, transact an insurance business in the state of Wisconsin without paying any license fee or obtaining any license, in competition with other companies who paid the license fee and obtained a license, that the plaintiff and said Chrysler Sales Corporation by representing to purchasers of such automobiles, that they obtained the benefit of insurance upon their cars without any additional cost and this plaintiff and said sales company did such business without the payment of any license fee, then this defendant admits that the said plaintiff and said sales company would naturally work up a large and profitable business, but defendant alleges that the same was in violation of laws of Wisconsin and said business was so conducted for the express purpose of attempting to evade the provisions of the Wisconsin statutes which required such in- [fol. 64] surance business to be conducted through and the policies signed by a local or resident agent in Wisconsin, and a license fee to be paid and a license obtained for the conduct of such business, and that the plaintiff, as an agent of said Chrysler Sales Corporation, knew of said scheme and plan to evade the laws of Wisconsin and became and was a party to said unlawful business and aided in the violation of said law to have such policies issued and such insurance business done in the state of Wisconsin without the payment of any license fee or the issuing of any license therefor and without having such insurance contracts signed by or issued through any resident agent of Wisconsin, and that said business was so done with the knowledge, consent and approval of this plaintiff and that he profited thereby.

Defendant further alleges that the issuing of certificates to the purchasers of such automobiles in Wisconsin under the arrangement and plan of conducting such business was in effect the issuing of insurance polices and contracts

of insurance in the state of Wisconsin and were so issued in violation of the Wisconsin Statutes because no license fee was paid and no license obtained and said policies or insurance contracts were not signed by, obtained from or issued through any resident agent in Wisconsin and no records were kept of such insurance or insurance policies so issued in any office in the state of Wisconsin.

In further answer to the allegations of said paragraph defendant alleges that he does not know as to the relative advantages of obtaining insurance or carrying on an insurance business in the manner in which this was being conducted as compared with the ordinary methods used by automobile concerns and automobile agencies generally, and defendant alleges that whatever advantage might be secured by the method of insurance adopted by plaintiff and the said Chrysler Sales Corporation, it would not justify the conduct of said insurance business in violation of the laws [fol. 65] of Wisconsin and defendant alleges that a license could and should have been obtained in the manner provided by law and such insurance business conducted in a legal manner as other insurance companies and agencies have conducted their business in the state of Wisconsin and so that the same could be done under the supervision of this defendant as insurance commissioner of the state of Wisconsin.

Defendant further answering the allegations of paragraph 6 of said bill of complaint admits that so far as he knows, said Chrysler Sales Corporation was the first automobile company to work out and announce arrangement for and secure the result and conduct its business in the manner alleged, without being licensed to conduct such business in accordance with the laws of Wisconsin.

(7) In answer to the allegations in paragraph 7 of said bill of complaint, the defendant admits the execution of the policy of insurance between the Palmetto Fire Insurance Company and the Chrysler Sales Corporation and admits that said Palmetto Fire Insurance Company was duly licensed as such company in the state of Michigan and admits that it was not so licensed in the state of Wisconsin, but denies that it was not doing any business or maintaining any agencies in the state of Wisconsin and alleges the fact to be that through its agents located in the state of

Michigan, it issued a certificate of insurance on each automobile sold by the said Chrysler Sales Corporation or to customers in the state of Wisconsin, insuring such cars against damage or loss by fire or theft and that each of such certificates so issued, sent and delieved to said purchasers of automobiles in Wisconsin were and are insurance polices and contracts of insurance made and delivered in Wisconsin to residents of Wisconsin and on such automobilies in Wisconsin under and by contracts of insurance [fol. 66] and insurance policies so issued and delivered in violation of the laws of Wisconsin, because no license had been issued and no license fee paid, and such contracts of insurance or insurance policies were not signed by or issued by or through any agent of Wisconsin.

(8) Defendant admits that under the provisions of the policy contract between the Palmetto Fire Insurance Company and the Chrysler Sales Insurance Company, that the said insurance company was to issue a certificate so-called in the form attached to said bill of complaint to each purchaser of an automobile in the state of Wisconsin and defendant alleges that such certificates were so issued and that they were and are in effect an insurance contract between such insurance company and the purchasers of such cars in Wisconsin and the said Chrysler Sales Corporation and other persons as their interests might appear, and defendant alleges that while said certificates and insurance contracts or policies purport to be so issued without charge, premium or commission paid by the beneficiary or purchasers of such cars, the fact was and is that the premium, commission or consideration for such insurance contract was charged in and paid by the purchaser of such automobiles as a part of the purchase price of such cars.

Defendant admits that such certificates and contracts [fol. 67] were issued and mailed from the Michigan office to the purchasers of such cars and that they were not signed by or issued through any resident agent in Wisconsin.

(9) In answer to the allegations of paragraph 9 of the said bill of complaint, defendant admits that the insurance so made may have been obtained at a reduced rate and defendant alleges that such insurance so obtained in violation of the law and without the payment of any license

fee could be made at a lower rate than it would be if a license fee had been paid and a license obtained as provided by law. Such facts would not justify or make legal the conduct of such business in violation of the provisions of the statute and the purchasers would not have the protection furnished under the laws of Wisconsin to policy holders in licensed insurance companies. But defendant alleges that whether said method of doing business is better or worse than the method provided by the Wisconsin Statutes, or whether it is cheaper or more expensive, is no justification for the conduct of such business in violation of the provisions of the Wisconsin Statutes.

(10. In answer to the allegations of paragraph 10 of plaintiff's bill of complaint, the defendant denies that the plaintiff is not an agent of the Chrysler Sales Corporation in the method of conducting such business and defendant alleges that the said plaintiff has knowledge of and is a party to the said plan of conducting such business and the issuing of such insurance certificate contract and policy and the doing of such insurance business without a license or the payment of any license fee in the state of Wisconsin and defendant alleges that the plaintiff participated in, and became a party to and profited by such scheme and plan of insurance without the payment of a license fee and the obtaining of a license in the state of Wisconsin as provided by law.

[fol. 68] (11) In answer to the allegations of paragraph 11 of plaintiff's bill of complaint, defendant denies that neither the plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory takes any part in the writing or placing of said insurance under said Michigan contract and denies that neither the plaintiff nor any sub-dealer solicits or receives or transmits any application for insurance and defendant alleges that the plaintiff sells its cars under the pretense and representation that said cars are so insured without cost to the purchasers which is an inducement to the sale and purchase of such cars through plaintiff, and defendant alleges the fact to be that the cost of such insurance is added to and made a part of the purchase price of such automobiles and is paid for by the purchasers of such cars in Wisconsin and that they are paid and transmitted as a part of the purchase price of such cars and is

passed on to the final purchaser of the cars. Defendant denies the allegation in said paragraph that the plaintiff or any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise, any part of such purchase price or act in any manner in behalf of or as agent of such insurance company and further denies the allegation that neither the plaintiff or any such dealer received any commission or other compensation in any form for or by virtue of the insurance protection afforded to the retail purchasers by said Michigan contract, and alleges the fact to be that said insurance is a part of the inducement and the consideration for every purchase of such automobile and the cost thereof is paid for by the purchasers of such automobiles as a part of the purchase price of such cars.

(12) Defendant admits that Chrysler cars are now being sold in Wisconsin in large numbers by and through plaintiff and admits that the purchasers of such cars and other parties interested therein are protected by such insurance [fol. 69] policies and such insurance certificates and defendant further admits that as insurance commissioner of the state of Wisconsin he has ruled and announced to the plaintiff and to said Chrysler Sales Corporation and to the public that the plan of transacting such business in Wisconsin by the issuance of such certificates of insurance or insurance contracts without the payment of a license fee and the obtaining of a license and the issuance of such insurance contract through and by a resident agent, was and is in violation of the laws of Wisconsin. Defendant admits that he has threatened to enforce such laws and to make prosecutions for the violations of the statutes of Wisconsin by such method of conducting such insurance business in the state of Wisconsin without paying a license fee and obtaining a license therefor in the same manner as all other insurance companies do, and defendant alleges that he so notified plaintiff and the said Chrysler Sales Corporation because, as he reads the laws of Wisconsin, and has been advised, it was his duty to enforce such laws and to require the payment of a license fee and the obtaining of a license by the persons so conducting such insurance business in the state of Wisconsin. Defendant alleges that he is advised that plaintiff has bought and sold a number of such auto-

mobiles pursuant to said plan and certificates of insurance were issued by said company insuring such automobiles and the purchasers and persons interested therein against loss or damage by fire or theft of said automobiles. Defendant alleges that the plaintiff participated in and profited by such contracts of insurance and insurance policies or so-called certificates and aided the said Chrysler Sales Corporation and the said insurance corporation to so conduct such insurance business in violation of the laws of the state of Wisconsin, and did so become a party to such violation in violation of the statutes of Wisconsin. Defendant admits that he has notified plaintiff and all persons who were parties to such illegal business to discontinue the same until [fol. 70] a license has been obtained in the manner provided by law and for failure so to do, prosecutions would be made of all persons participating in such illegal business and violating the statutes of Wisconsin.

Defendant further alleges that he is not to blame for the predicament plaintiff and others have gotten themselves into by reason of such method of conducting business in violation of the laws of Wisconsin, and defendant alleges that the plaintiff cannot be legally wronged or damaged by being prevented from conducting such business or becoming parties to and aiding in the conduct of such business in violation of the laws of the state of Wisconsin and profiting by the sale of automobiles under the inducement of such an insurance policy contract which was issued in violation of the laws of Wisconsin, and defendant alleges that the plaintiff's remedy, if he has any, should be against the said Chrysler Sales Corporation or said insurance company for pretending to issue such insurance certificate contracts without being licensed so to do, but defendant alleges that the plaintiff had full knowledge of all of said facts and of the law and participated in the said method of doing such business and profited thereby and profited in the saving of the cost of such license in the State of Wisconsin and is equally liable and responsible for such plan and method of conducting such insurance business in connection with such sales without any license fee having been paid to the state of Wisconsin or any license issued by the state of Wisconsin or the defendant insurance commissioner for the conduct of such business and denies that the said statutes of Wisconsin are unconstitutional and alleges that the said

laws are valid and are necessary for the proper supervision by the defendant insurance commissioner of such insurance business to prevent fraud on the people of Wis- [fol. 71] consin and to properly regulate such insurance business in the state and to prevent irresponsible insurance companies from doing such insurance business in the state of Wisconsin and from making illegal and excessive charges for the same.

(13) In answer to the allegations of paragraph 13, defendant denies that the said statutes are in any way illegal, void or unconstitutional and alleges that such statutory provisions are legal, valid and are necessary regulations for the proper supervision of such insurance business to protect the people of Wisconsin against fraud, excessive insurance charges and irresponsible insurance companies.

Defendant further denies that the making and performance of such contracts have been wholly outside of the state of Wisconsin.

Defendant further alleges that the said scheme and plan of conducting said business was devised and is being so carried on with the express idea and for the express purpose of attempting to evade the statutes of Wisconsin and prevent the defendant insurance commissioner from supervising such insurance business and that the plaintiff is a party to and is aiding in such fraudulent and illegal insurance business and defendant alleges that such illegal business is being done by this plaintiff at the request of and is aiding such Chrysler Sales Corporation and said insurance company in carrying on their said plan and scheme for carrying on such insurance business in the state of Wisconsin without paying a license fee or obtaining a license in the manner provided by law, and in violation of the statutes of the state of Wisconsin.

(14) Defendant admits the allegations of paragraph 14 of said bill of complaint.

[fol. 72] (15) In answer to the allegations of paragraph 15 of said bill of complaint, defendant denies that the plaintiff is without remedy in the premises except in a court of equity.

Further answering said bill of complaint, defendant alleges that the Palmetto Fire Insurance Company is the real party in interest and a necessary party in said action.

For further answer to said bill of complaint, defendant alleges that such policy purports to be issued in and by virtue of the laws of Michigan, but defendant alleges that it does not conform to the requirements prescribed by either the laws of Michigan or Wisconsin and that the whole plan and scheme is without authority of either state and is illegal, unlawful and void.

For further answer to said bill of complaint, defendant alleges that this plaintiff and other sales agents in pursuance to and in carrying on such scheme of selling cars, are selling insurance and insurance contracts in Wisconsin without a license and in violation of the insurance laws of Wisconsin.

Defendant alleges that said method, plan and scheme of conducting, carrying on and transacting such business in Wisconsin and other states in such manner was and is illegal and the results of and is an illegal conspiracy by and between plaintiff, the said Palmetto Fire Insurance Company, the Chrysler Sales Corporation and the distributers and purchasers of such automobiles in Wisconsin, to evade the laws of Wisconsin and that such business is being so carried on in Wisconsin in accordance with such illegal conspiracy and plan and in violation and defiance of the laws of Wisconsin and is unlawful.

Defendant further alleges that the plaintiff in this suit is not a citizen of the United States nor of any state in the [fol. 73] United States and is, therefore, not entitled to the rights of citizens as guaranteed by the Fourteenth Amendment to the constitution of the United States.

For further answer to said bill of complaint, defendant denies each and every allegation therein not herein admitted.

Wherefore, Defendant prays that no temporary injunction be issued in this action pending the trial and disposition of the same and that said action be dismissed with costs to defendant.

Herman L. Ekern, Attorney General; T. L. McIntosh, Assistant Attorney General, Attorneys for Defendant.

[fols. 74 & 74½] *Duly sworn to by W. Stanley Smith. Jurat omitted in printing.*

Due and personal service of the within Answer admitted this 26th day of August 1925.

Richmond, Jackman, Wilkie and Toebaas, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO APPEAR FOR HEARING AND TEMPORARY RESTRAINING ORDER—Filed August 5, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Wisconsin and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of plaintiff and other distributors and dealers selling Chrysler cars in Wisconsin and that said declarations, statements and threats have already had serious effect on, and are causing [fol. 76] irreparable injury to plaintiff's property and business, and that such arrest and prosecution would cause irreparable injury to plaintiff and plaintiff's property before any hearing on notice can be had in this matter by caus-

ing great loss of customers, dealers and good will and disruption of sales organization.

Now therefore, on motion of plaintiff, it is ordered, that defendant appear on August 22nd, 1925, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Superior, Wisconsin, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Evan A. Evans, Circuit Judge and Hon. F. A. Geiger, District Judge.

Further ordered that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Wisconsin and to the defendant in this action.

Further ordered that for the reasons and on the grounds hereinbefore stated, a temporary restraining order is hereby granted without notice, to be in effect only until further order of the court and in any event to be in effect no longer than the time of the hearing and determination of said application for temporary injunction. The restraining order shall not be effective until there is filed with the clerk a bond executed by sureties approved by the clerk in the sum of $1,000.00 conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who [fols. 77 & 77½] may be found to have been wrongfully restrained or enjoined thereby. A copy of said bond shall be served with the service of this order.

Therefore it is ordered that until the further order of this court, or until the hearing and determination of said application for temporary injunction, defendant and his deputies, agents and employes, and all persons acting under him, be and they are hereby restrained and enjoined from bringing or causing to be brought, or threatening to bring or cause to be brought any prosecutions or actions or proceedings for recovery of penalties or forfeitures against plaintiff, or against any dealers in or distributors of Chrysler Cars in Wisconsin, or the servants, agents or employes

of them or any of them, based on or purporting to be based on or by reason of the contract of insurance made between Chrysler Sales Corporation and Palmetto Fire Insurance Company, dated June 16, 1925, whereby purchasers at retail of Chrysler cars in Wisconsin, and other parts of the United States, and other persons interested in said cars are protected in respect to loss on said cars by fire or theft, or based on or purporting to be based on or by reason of the sales of Chrysler car in Wisconsin, and the collection of the full purchase price thereof, including delivery and other charges according to the present method of selling said cars in Wisconsin or by reason of the protection afforded purchasers of said cars in Wisconsin under said contract of insurance and from publishing or circulating statements that plaintiff or the dealers in or distributors of Chrysler cars in Wisconsin are violating the Wisconsin law or are acting as insurance agents contrary to law or otherwise.

Dated August 3rd, 1925.

C. Z. Luse, District Judge.

[fol. 78] [File endorsement omitted.]

Marshal's return on service of temporary restraining order omitted in printing.

[fols. 79-81½] Notice of hearing on motion for temporary injunction and service omitted in printing.

[fols. 82 & 82½] Application for hearing and motion for temporary restraining order, filed August 3, 1925, omitted in printing.

[fols. 83-84½] Bond on restraining order for $1,000.00 approved; omitted in printing.

[fols. 85 & 85½] In United States District Court

[Title omitted]

Before Circuit Judge Evan A. Evans and District Judges F. A. Geiger and C. Z. Luse, on Application for Preliminary Injunction

Opinion on Application for Preliminary Injunction—Filed November 18, 1925

Per Curiam:

It being considered that the questions involved in this suit are substantially no different from those involved in Chrysler Sales Corporation, Plaintiff, vs. W. Stanley Smith, as Commissioner of Insurance, Defendant, in which last mentioned suit an opinion is this day filed, the application of the plaintiff for preliminary injunction in this suit will be denied upon the grounds stated in the opinion aforesaid.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, C. Z. Luse, District Judges.

Filed November 18, 1925, at 10 A. M. Herbert C. Hale, Clerk, by C. W. Bishop, Deputy.

[fol. 86] In United States District Court

[Title omitted]

Hearing on Application for Preliminary Injunction, Before Evans, Circuit Judge, and Geiger and Luse, District Judges

Opinion—Filed November 18, 1925

Luse, District Judge:

Complainant, a Michigan corporation, seeks to enjoin defendant from publicly asserting that insurance issued by the Palmetto Fire Insurance Company, a corporation of South Carolina, to Wisconsin residents owning Chrysler automo-

biles sold in Wisconsin, is so issued contrary to the laws of Wisconsin and from threatening to prosecute Wisconsin dealers in Chrysler cars for violating Wisconsin statutes regulating the insurance business within the state to the irreparable damage to plaintiff's business in the sale of Chrysler cars in Wisconsin. Complainant avers that the Wisconsin statutes, properly construed, do not apply to the situation and if they do, they are unconstitutional upon various grounds and particularly under the due process clause of the Fourteenth Amendment. The application was heard on the pleadings, supplemented by affidavits.

Prominent among the state statutes which merit consideration, are the following:

Sec. 201.41 (1), Wis. Sts.:

"No insurance corporation shall transact any insurance business in this state without first having paid the license [fol. 87] fees and obtained the license therefor as required by law."

By sub-section 2 of that section each such company is required to file a statement that it desires and will accept a license within the state, revocable in case of violation of law or certain impairment of its capital; appoint the Commissioner of Insurance its attorney in fact for service of process. The section also requires the insurer to file a copy of its charter and evidence that it has a certain capital and has deposited either in this state or where domestic a certain amount in approved securities.

Sec. 201.44:

"(1). No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

"(5). Any company or person soliciting or placing insurance without complying with this section shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same."

A penalty is provided for violation of this section.

Sec. 209.04:

"(1). No person, officer, or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority; nor shall any such person officer, broker, agent, or subagent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. The exceptions herein shall not apply to mutual insurance corporations or fraternal societies not maintaining a lodge system which corporations or societies issue only policies of health or accident insurance or both.

"(4). Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsec- [fol. 88] tion (2) of this section shall pay five times the amount of fees upon each license included in such violation.

Sec. 209.05:

"Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he received no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16."

Sec. 348.488:

"Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars. Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment."

By virtue of these provisions of the Wisconsin law, among others, defendant claims that the Palmetto Fire Insurance Company and the Wisconsin dealers in Chrysler cars are violating the laws of Wisconsin and are amenable thereto as he has claimed.

The facts disclosed by the record or reasonably inferable therefrom are as follows:

Complainant is a Michigan corporation engaged in buying all of the automobiles manufactured by the Chrysler Motor Corporation and selling them at wholesale throughout the United States to distributors and dealers of whom there are some three thousand in the country and one hun-[fol. 89] dred thirty in the state of Wisconsin. It has established this sales organization at great expense and its success depends in part on its ability to retain these distributors and dealers for the continuance of sales, which during the first half of 1925 exceeded one half million dollars in the state of Wisconsin. It appears that a large percentage of automobiles sold at retail in this country are sold on the deferred payment plan, the deferred payments being evidenced by promissory notes, secured by lien on the car sold, and usually assigned by the dealer to some bank or finance company which requires that insurance against fire and theft be taken out for the protection of the owner and itself from loss through those hazards. The result, so complainant alleges, has been that such banks or finance

companies have been required to maintain organizations to collect deferred payments, watch the cars against improper disposition before final payment, etc., with the further result that the cost of financing, which is invariably borne by the retail purchaser, is not uniform, usually high and often excessive. One element making for uniformity and cheapness in financing is cheap insurance and to secure that for the benefit of the retail purchasers, complainant, on June 16, 1925, entered into a contract, called in the bill an "open policy," with the Palmetto Fire Insurance Company, a South Carolina corporation, not admitted to do business in Wisconsin, and Commercial Credit Company, a Delaware corporation, the legal effect of which, together with an interpretation of the acts of the Wisconsin dealers thereunder, present the main questions in controversy. A new contract was entered into between the parties on Aug. 4, 1925, the day after this suit was commenced, modifying and clarifying to some extent the contract of June 16, but making no substantial change in the nature of the questions presented.

The purpose of the contract of June 16, is stated therein as follows:

[fol. 90] "Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy."

By the terms of the contract Palmetto Fire Insurance Company insures "Chrysler Sales Corporation and/or for account of whom it may concern, as specified, against loss by fire or theft to the automobiles described for a period commencing at noon July 1, 1925, and ending at noon July

1, 1926, but all certificates issued thereunder remain "in full force and effect for the term specified in such certificates." The amount of premium is not stated except "as specified," evidently referring to an undisclosed collateral agreement. Usual warranties as to the occupation or business of the assured, the uses to which the automobile will be put, and the place where same is kept, are waived by the insurer. The existence of any lien or mortgage does not vitiate the insurance. Liability of the insurer is limited to the actual cash value of the property at the time of any loss or damage, which loss or damage is to be ascertained or estimated with proper deduction for depreciation, the usual provision with regard to proof of loss within sixty days is present and likewise a provision for appraisal of the amount of loss or damage in case the assured and the insurer shall fail to agree thereon. Coverage is for 100% of the list price of each Chrysler car, F. O. B. Detroit, on date of purchase at retail, limited, however, as already indicated to the actual cash value at the time of [fol. 91] loss; coverage under the contract and under certificates to be issued is provided to be "automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall attend in respect to such Chrysler car for a period of tweve months." The purchaser is defined as one purchasing or agreeing to purchase Chrysler cars at retail. No car is insured which on July 1, 1925, was in the possession of or in transit to any dealer or distributor unless reported by Chrysler Sales Corporation to the insurer. The insurer is required to issue certificates to any purchaser at retail in the form attached to the policy and the insurance evidenced by the contract and certificate is not subject to cancellation by either party. If the automobiles are financed, that is, sold on deferred payments secured by lien upon the car, a duplicate of such certificate is furnished to the finance companies financing the purchase. It is agreed, however, that all cars shall be automatically covered as provided in the contract notwithstanding the failure or omission to apply for or issue a certificate or the failure to report to the insurer any car as required by the policy. In cases where the purchaser takes

out other insurance upon his car and the Palmetto Fire Insurance Company disclaims liability on that account, coverage under the contract is provided to operate as excess insurance, not to apply to any loss until recovery from such other insurance shall have been exhausted. The Chrysler Company is obliged to send original detailed reports to Commercial Credit Corporation and a duplicate thereof to the insurer of Chrysler cars in the possession *or* or in transit to its distributors and/or dealers and unsold on July 1, 1925, upon which insurance is desired under the con-[fol. 92] tract. It is also required to send each month on or before the 15th day reports to the same parties of the cars shipped to its dealers and distributors throughout the United States during the preceding calendar month. The agreed premiums are to be paid by Chrysler Sales Corporation for the insurance provided for and are paid by the Chrysler Corporation to the Commercial Credit Corporation or any insurance broker designated by the latter on or before the 15th day of each month for all Chrysler cars reported by the distributors and dealers of the Chrysler Sales Corporation as sold and/or leased during the preceding month and which are insured, and a report of such cars in detail is required to accompany such remittance. Commercial Credit Corporation is required to remit or cause the insurance brokers designated by it to remit the insurance premiums on or before the 25th day of each month to the agents of the Palmetto Fire Insurance Company at Baltimore, Maryland. Commercial Credit Corporation guarantees the payment of such premiums. Payment of all losses claimed are to be made

"to purchaser unless the purchase of any Chrysler car has been financed, in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or other finance companies or dealers (meaning all who have advanced deferred payments on behalf of the purchaser and taken security therefor) financing the same for the account of all parties as their respective interests may appear."

The form of certificate attached to the contract recites in effect that pursuant to the contract between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company, the new Chrysler car sold and delivered to the purchaser whose address is given and which car is specifically

described, is insured against loss or damage from the perils insured against for a period of one year, with specific dates, for a sum stated, being the list price of the car including standard factory equipment, F. O. B. Detroit. The certifi- [fol. 93] cate asserts that the interests of the Chrysler Sales Corporation and/or of purchasers, owners, dealers, persons, etc., or others having an insurable interest, are protected with the same force and effect as if they severally accepted the same. The loss, if any, is to be adjusted with the purchaser but to be paid subject to all conditions of this certificate only to the person named in the certificate who holds the lien or mortgage upon the car "for account of all interests". It is provided in the certificate that it shall not be valid until countersigned by the duly authorized agent at Detroit, Michigan.

It is averred by complainant that whether a Chrysler car is sold at retail for cash or on time, the price is the same except for the charge made for financing the deferred payments which have heretofore varied but which under the plan devised by complainant has become 8% upon the unpaid balance if the sale is on time. Nor may purchaser obtain his car at a less price whether or not he desires the protection of such insurance. The practice with respect to the sale of Chrysler cars is that the Chrysler Sales Corporation from time to time has fixed the list price of its cars and sells them to its distributors for a cash price computed as follows: List price, less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. In computing the discount, there is not included the war tax or the delivery charge. On July 1, 1925, additions were made to the delivery charge on all models of Chrysler cars. The complaint, however, does not disclose whether this increase in the delivery charge corresponded in amount with the cost to the Chrysler Sales Corporation of the insurance premium which it would pay under the Palmetto contract or not but the inference is unmistakable that such was the fact. The distributor sells to the dealer on the same basis as the distributor has [fol. 94] bought but allows a smaller discount on the list price. The dealer in turn sells to the retail purchaser at a price equal to the list price, plus freight, war tax and delivery charge. The retail dealer reports to the com-

plainant the name of the purchaser, date of sale, motor number, style, etc., on retail sales made and also the name of the person or corporation financing the purchase if made on time. Complainant notifies the agent at Detroit, Michigan, of the insurance company and he mails the certificate from his office in Detroit to the purchaser and duplicates to others who to his knowledge may have an interest in the car.

Complainant alleges, while defendant denies, that the distributors of and dealers in Chrysler cars are in no way agents of the plaintiff and that no dealer or distributor takes any part in writing or placing or in the payment for insurance under the Michigan contract. Nor, says complainant, does the distributor or dealer solicit, demand, receive or transmit any premium. The contention of the complainant is that as to those cars shipped and to be sold at retail in Wisconsin, as is true throughout the United States, they become the property of the dealer, for which he has paid a stated price and which he sells in Wisconsin at a stated price as his own property and not as the agent for any one and that the insurance becomes effective not by virtue of anything the dealer does but by virtue of the contract of June 16 last entered into in Michigan and that the insurance which becomes effective in the hands of the retail purchaser in Wisconsin becomes effective solely by virtue of the Michigan contract and that the sale of the cars in Wisconsin by the dealers cannot be properly construed as effecting any insurance which it claims becomes automatically effective by virtue of the Michigan contract. Most of these contentions are asserted as facts in the bill and denied by the defendant and are of course to be resolved [fol. 95] by a true construction and interpretation of the contract and the course of business thereunder, with the legitimate inferences to be made therefrom.

One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail and until title has passed from, not only complainant, but, its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract.

Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market, as though a part or accessory and that the dealer who sells the car has nothing to do with the insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) The insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in Carpenter v. Providence Co., 16 Peters, 495, 503, quoting Lord Hardwick:

"The society are to make satisfaction in case of any loss by fire. To whom, or for what loss, are they to make satisfaction? Why! to the person injured, and for the loss he may have sustained, for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage."

A similar thought underlies the decision in Paul v. Vir-[fol. 96] ginia, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

"These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale."

And this thought has withstood numerous assaults as is indicated in N. Y. Life Ins. Co. v. Deer Lodge County, 231 U. S. 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.

What is the effect of the postponement of the operative

effect of the contract? In considering this question it should be borne in mind that we are not concerned in this suit with the validity of the contract as such, but rather, with the question of whether or not the insurance eventually effected under it is so effected in Wisconsin as to give the regulatory statutes of that state, opportunity to operate thereon.

The course of business so far as a Wisconsin dealer is concerned is that he sells a car located in Wisconsin to a Wisconsin purchaser and offers as an incident to the sale, the insurance in question; the car including the insurance, is accepted,—the purchaser pays the dealer for the car, including the insurance premium, and this all occurs between Wisconsin residents with reference to property located in Wisconsin. By the sale the dealer thus fixes the term of the insurance which runs for one year from the date of retail sale; he normally reports the sale to complainant who in turn reports it to the insurer and accom- [fol. 97] panies the report with a remittance of the premium. If the retail purchase is upon deferred payments, the dealer and purchaser arrange for some one to finance it, and he becomes a beneficiary, selected ordinarily but not necessarily in Wisconsin and finally a certificate is mailed at Detroit to the Wisconsin insured. The dealer in Wisconsin, clearly does these things in Wisconsin: 1. He sells the car, including the insurance; 2. He collects the price, including the premium (that he does not remit it, is of small moment, having already advanced it, receiving nothing for it); 3. He fixes the term of the insurance; 4. He selects the beneficiaries—purchaser and financier; 5. He notifies complainant of these details by mail. All these things, except the last are essentials to the completion of the insurance contract and bring it into actual existence and occur in Wisconsin, between residents of that state, the dealer acting with authority under the Michigan contract. On the oral argument a certificate said to be typical of those delivered to purchasers, was handed to the court, which bore the endorsement, "any Chrysler dealer will notify purchaser to whom notice of any such loss should be given." We are now informed that such endorsement is eliminated from all certificates which are being sent out. The endorsement quoted above was slightly confirmatory,

but its elimination does not detract from the relationship of the dealers to the insurance as the whole plan discloses it.

Having these facts in mind and the thought that insurance is a matter of contract between persons, we are confronted immediately by the fact that the Michigan contract is not an insurance in praesenti, but rather a contract to insure in the future. It is not intended to indemnify Chrysler, nor its distributors, nor dealers, though the property successively passes through them in unqualified [fol. 98] ownership. Properly construed, we deem the contract one for future insurance to indemnity the retail purchasers and through them those who finance the retail purchasers, all to be provided by using the Chrysler organization of distributors and dealers to secure the adoption of the insurance by the retail purchasers and lien holders. How, then, can it be said that what the dealer does in Wisconsin are mere collateral acts, where they operate to bring the insurance into effect for the first time—give it life—and only by those acts are those essentials of insurance, identity of insured, identity of property, term of the risk and payment of premium, consummated? When, in addition, it is considered that in effect the Chrysler dealers act as solicitors of insurance as an incident to the sale of automobiles, we have no doubt that the insurance received by each retail purchaser in Wisconsin is in fact consummated in that state. The contention of counsel that the insurance is effective whether the retail purchaser wishes it or not, is erroneous, we think, and based on the theory that the insurance is the subject of barter and sale and passes as does the wind-shield wiper, as an accessory, from the dealer to the purchaser. The analogy is incomplete, for reasons already stated, and also because the dealer never has the insurance to pass, but rather it springs into existence upon its acceptance by the purchaser. That such acceptance is practically assured by the practice of demanding its cost regardless of whether the purchaser desires the insurance or not, does not alter the fact. In our opinion, the insurance on cars sold by Wisconsin dealers, in Wisconsin to Wisconsin purchasers, is consummated within that state.

Among other facts which tend to support this conclusion, it may be borne in mind that by the Michigan contract it is provided that "insurer shall issue certificates to purchaser

[fol. 99] substantially in the form attached," while the course of business is to mail such certificate to the retail purchaser. It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity and the course of business adopted indicates that delivery of the same to him is made in Wisconsin through the postal service as the agent of the insurer. Again, while it is contended that the retail dealer does not sustain an agency relation to any one and sells the car as his own property, the whole plan confidently assumes that the dealer will sell the automobile at retail and collect the price designated as the list price together with the freight and delivery charges, and more to the point, it is assumed that the retail dealer will make report of the sale of the car at retail for the purpose of furnishing the basis not only for the issuance of a certificate to the purchaser, but also—and this is no doubt of some importance to the insurer—for the purpose of determining the premiums which Chrysler shall be required to pay to the insurer.

We have not overlooked the fact that all of these acts performed by the dealer in Wisconsin are to him no doubt mere incidents in the larger transaction of selling an automobile, even though he stresses, as he probably does, the insurance feature in his "sales talk" nevertheless this does not make the insurance feature any the less an item which the state may, and in common with most, if not all, has seen fit to regulate.

Nor do we believe that the fact that the Michigan contract is written in favor of "Chrysler Sales Corporation and or for account of whom it may concern," alters the conclusion indicated. The fact that the contract in question postpones the existence of any insurance until after the transactions in Wisconsin above outlined, differentiate [fol. 100] the contract here from any in the cases called to our attention or which an independent search has revealed. Even in those cases where insurance in praesenti exists and a change of ownership occurs, the insurance is enforced on behalf of those intended by that phrase "provided the person who ordered it had the required authority from the former, or they subsequently adopted it." Hooper v. Robinson, 98 U. S. 536; Hagen vs. Scottish Ins. Co., 186 U. S. 423; Waring vs. Indemnity Co., 45 N. Y. 606. While

it is held that adoption may be shown informally and may occur even after loss, it is clear that in those cases operative insurance did not await the selection and assent of one of those intended by the phrase "whom it may concern," nor was the term of the effective insurance fixed by the transaction with him. We do not intend to imply that there are no other serious questions presented by the contract and facts here, but laying those questions aside, we think the above considerations are sufficient to repel the idea that the phrase "whom it may concern" materially affects the question before us.

Enough has already been said, we think, to indicate that our view of the case at bar clearly distinguishes it from the case of Allgeyer vs. Louisiana, 165 U. S. 578, in which no question of agency was involved and wherein it was held the contract was "made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state." P. 592. In the instant case the contract, and the only contract which actually affords effective insurance, is made in Wisconsin, to be performed there (Lumbermen's Ins. Co. vs. Meyer, 197 U. S. 407, P. 416) and the subject is property located there. Nor is Minnesota Association vs. Bonn, 261 U. S. 140, in point for there the members who solicited new members were without authority to obligate it. In Aetna Life Insur-[fol. 101] ance Co. vs. Dunker, 266 U. S. 389, the Tennessee contract was in full force before the assured removed to Texas and what transpired there after was in fulfillment of the completely effective Tennessee contract. Nor are we dealing here with a case where a resident of Wisconsin has in another state entered into a contract with a foreign corporation, so that the laws of Wisconsin need be given extraterritorial force as was condemned in N. Y. Life Ins. Co. vs. Head, 234 U. S. 149. On the other hand our view is that notwithstanding it is quite different in its facts, the instant case comes squarely within the principles of Hooper vs. California, 155 U. S. 648, Nutting vs. Mass., 183 U. S. 553, and Penna. Lumbermen's Ins. Co. vs. Meyer, 197 U. S. 407.

Our attention has been called to the decisions of the United States District Court for the southern district of Ohio and the United States District Court for the southern district of New York, both yet unreported, and rendered in

actions brought by the Palmetto Fire Insurance Company to enjoin the revocation of its licenses to do business in the states of Ohio and New York by the respective superintendents of those states. In the Ohio case it was held that the statute of that state prohibiting an insurance company legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated or located in that state, except through a legally authorized agent there in, who should countersign all policies and enter the payment of the premium upon his record, was a valid law so far as insurance corporations who had taken out licenses were concerned and that such a license might properly be revoked if the statute was violated. The question there passed upon is quite clearly not involved in the instant case. In the New York case the defendant superintendent of insurance was enjoined from revoking the license of the Palmetto Fire In- [fol. 102] surance Company upon the ground, as we read the decision, that the New York statutes do not prohibit the transactions involved and that the transactions being valid in Michigan, and not made invalid in New York, no legal cause for cancellation of the license existed. In that opinion it is said:

"The policy which is issued at Detroit, Michigan, under the plan insures the Chrysler Sales Corporation on cars sold together with others who may have an interest therein, including the ultimate purchaser in New York, who pays no premium but can take advantage of the insurance if he chooses to avail himself of it. No renewal of the policy is allowed. It amounts to a gift of insurance for one year if the ultimate purchaser of a Chrysler car sees fit to avail himself of it."

It is apparent from a comparison of the foregoing quotation with what we have said that the New York court has arrived at a very different interpretation and construction of the contract and the course of business under it, from ours. That opinion has caused us to reexamine the grounds of our own construction, but we find ourselves unable to subscribe to that part of the opinion which underlies the conclusion that the insurance provided under the plan for the retail purchaser is a gift which arises out of a Michigan

transaction. With all due deference we adher- to the interpretation of the contract and the course of business thereunder, hereinbefore outlined.

The business done and to be done in Wisconsin under the plan in question, in our opinion, constitutes the transacting of business within the state and the Palmetto Company is one of those validly required to take out and pay for a license under Sec. 201.41 (1) of the Wisconsin statutes, quoted above.

It is contended that the Chrysler dealers are not agents of the insurance company and are not within the terms of the penal statutes under which defendant threatens prosecutions. Granting that they are not agents in the conventional sense, and probably do not regard themselves as [fol. 103] such, nevertheless that question must be determined by what they do in fact, its effect, whom they do it for and by what authority, and by such test they clearly act within Wisconsin to effect insurance for purchasers upon automobiles, on behalf of the Palmetto Company with authority. Granting, further, that such statutes must be strictly construed, we have no hesitancy in concluding that the Chrysler dealers in Wisconsin operating under this plan bring themselves within both the letter and spirit of Sec. 209.04 Wis. Sts. The word "person" in the section is not to be treated as surplusage and must be held to include those who, though not officers, brokers, agents or subagents in the legal sense, in an analogous capacity, perform for the insurance company the forbidden acts of aiding "in any manner in transacting the business of or with such corporation (one required to pay a license) in placing risks or in collecting any premiums or assessments or effecting insurance therein."

Whether other Wisconsin statutes validly apply is not necessary to decide, for from what has already been said it follows that the application for a preliminary injunction must be denied.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

[File endorsement omitted.]

[fol. 104] In United States District Court

[Title omitted]

Judgment—November 18, 1925

The above entitled matter having been considered at a hearing heretofore held before the Hon. Evan A. Evans, Circuit Judge, Hon. F. A. Geiger, and Hon. C. Z. Luse, District Judges in the matter of Chrysler Sales Corporation vs. W. Stanley Smith as Commissioner of Insurance for the State of Wisconsin, on its application for preliminary Injunction:

In open Court, the Honorable C. Z. Luse, District Judge presiding it was ordered that the application for preliminary injunction in this suit be denied upon the grounds stated in the opinion as filed in the case of Chrysler Sales Corporation vs. W. Stanley Smith, above referred to.

Plaintiff duly excepts and exceptions allowed.

I hereby certify the above to be a true copy of the original entry on the minutes of the court proceedings in the United States District Court for the Western District of Wisconsin, at Superior, on the 18th day of November, 1925.

Herbert C. Hale, Clerk, by C. W. Bishop, Deputy.

[fol. 105] Clerk's return omitted in printing.

[fol. 106] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 107 & 107½] Citation, in usual form, showing service on Herman L. Ekern, filed December 16, 1925, omitted in printing.

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

Plaintiff in connection with petition for appeal herein, presents and files therewith its assignment of errors, as to which matters and things it says that the order entered herein on the 18th day of November, 1925 is erroneous, to-wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in refusing to hold invalid as in violation of the 14th Amendment to the Constitution of the United States and the full faith and credit clause of said Constitution (Article IV, Sec. 1) and impairment of contract clause (Article I, Section 10) of said Constitution, Section 203.07 Wisconsin Statutes 1923 declaring that all fire insurance contracts on property in Wisconsin shall be held to be made and effected within Wisconsin and prohibiting the making of any such contracts on property in Wisconsin directly or indirectly by any unlicensed company.

Third. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Wisconsin, including plaintiff and others similarly situated, selling in Wisconsin automobiles the purchasers of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insur-[fol. 109] ance Company as set out in complaint and doing acts incidental to such sales are violating the penal provisions of Wisconsin Statutes and particularly Section 209.04 Wisconsin Statutes 1923.

Fourth. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Wisconsin by dealers in and distributors of Chrysler cars in Wisconsin (including plaintiff and others similarly situated) and acts incidental thereto as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance busi-

ness in Wisconsin and is subject to the tax provided for by Section 76.33 Wisconsin Statutes 1923 as amended by Chapter 372, Wisconsin Laws of 1925 and that said statute so imposing such tax is valid and not in violation of the Constitution of the United States.

Fifth. That the court erred in holding that dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated, are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Wisconsin.

Sixth. That the court erred in refusing to hold that Section 4575s Wisconsin Statutes 1923 as amended by Chapter 375 Wisconsin Laws 1925 prohibiting any officer, agent, solicitor or broker or other employes of any unauthorized insurer from taking or receiving an application for insurance in Wisconsin or receiving or collecting premiums does not apply to or prohibit any of the acts of dealers in or distributors of Chrysler cars, including plaintiff and others similarly situated as described in complaint.

Seventh. That the court erred in refusing to hold that Section 209.04 Wisconsin Statutes 1923 has no application to dealers in and distributors of Chrysler automobiles in [fol. 110] Wisconsin, including plaintiff and others similarly situated.

Eighth. That the court erred in refusing to hold that Section 201.44 Wisconsin Statutes 1923 providing that no policy of insurance shall be issued or delivered in Wisconsin except through a licensed resident agent does not apply to acts of dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated.

Ninth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Wisconsin (including plaintiff and others similarly situated) described in complaint and contract made in Michigan between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the operation of said contract said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Wisconsin in violation of Section 201.41 Wisconsin Statutes 1923.

Tenth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Wisconsin including plaintiff and others similarly situated, are not violating any law of Wisconsin and that there is no Wisconsin law sanctioning or supporting the prosecutions and actions against such dealers and distributors threatened by defendant.

Eleventh. That the court erred in holding that the threatened acts of defendant W. Stanley Smith are supported and sanctioned by law and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff and others similarly situated.

Twelfth. That the court erred in holding that Section 209.04 Wisconsin Statutes 1923 construed as prohibiting the acts of Chrysler dealers and distributors, including [fol. 111] plaintiff and others similarly situated as set out in the complaint is a valid law and does not violate any provision of the Constitution of the United States.

Thirteenth. That the court erred in holding that by virtue of the facts set out in complaint the Palmetto Fire Insurance Company is subject to tax by the State of Wisconsin in respect to premiums on the contract of insurance involved in this action and that liability to such tax exists and that the Wisconsin Statute imposing such tax is not in violation of the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that the statutes of the State of Wisconsin in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated, are invalid as in violation of the Constitution of the United States in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein, and others similarly situated, without due process of law and deny to said dealers and distributors, including plaintiff the equal protection of the law and prohibit the sale of plaintiff's property by itself and other independent dealers in Wisconsin by virtue of the fact that the Chrysler Sales Corporation has effected

in Michigan a contract of insurance protecting and benefitting all retail purchasers of Chrysler cars, thus attempting to penalize the making of a contract of insurance outside the State of Wisconsin and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors, including plaintiff and others similarly situated, to the prejudice and destruction of plaintiff's business, and because said statutes so construed [fols. 112 & 112½] violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Fifteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

Sixteenth. That the court erred in refusing to hold that in so far as Wisconsin Stat-es are construed as prohibiting the acts of Chrysler distributors and dealers in Wisconsin, including plaintiff, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys for Plaintiff.

[Endorsed:] Original. 49 Equity. United States of America, District Court, Western District of Wisconsin. Clark Motor Company, Plaintiff, vs. W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, Defendant. Assignment of Errors. Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys. 2-29 Board of Commerce Bldg., Madison, Wisconsin. Due service of within assignment of errors and of notice of within appeal admitted this 16th of December, 1925. Herman L. Ekern, by T. L. McIntosh, Attorneys for Defendant. U. S. District Court, West. Dist. of Wis. Filed Dec. 16, 1925. Herbert C. Hale, Clerk. C. W. Bishop, Dep.

[fol. 113] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION AS TO PARTS OF RECORD TO BE PRINTED—Filed February 2, 1926

It is hereby stipulated that the transmitting of the record in this action was delayed because of necessity for counsel on both sides to go over transcript and agree on corrections which have been made. Stipulated further that this case may be docketed at once if not already docketed.

Appellant states that in pursuance of rule ten of the United States Supreme Court it expects to rely on each and all of the assignments of error which are attached to the record filed in this case.

It is stipulated that the following parts of the record need not be printed and that same are not necessary for a consideration of the assignments of error or any of them:

(1) Omit Bond on Appeal, pp. 4 and 5, of Record, and insert in lieu thereof the following:

"Here appears Bond on Appeal duly approved by District Court."

(2) Omit Precipe for Transcript on said appeal, pp. 6-8, of record, and insert:

"Here appears Precipe for Transcript on said Appeal, with admission of due service of same."

(3) Omit Notice of Plaintiff to the Defendant and to the Governor of the State of Wisconsin, and to the Atorney [fol. 114] General of the State of Wisconsin notifying of Application for interlocutory injunction at pp. 79-81 of record and insert in lieu thereof the following:

"Here appears due notice of plaintiff to the defendant, to the Governor of the State of Wisconsin, and to the Attorney General of the State of Wisconsin, notifying him and them of the application of the plaintiff for an interlocutory or preliminary injunction and due and sufficient admissions of service of the same, which notice was given in accordance with section 266 Judicial Code."

(4) Omit application for hearing under section 266 Judicial Code, and Motion for Temporary Restraining Order filed August 3, 1925, at p. 82 of Record, and insert in lieu thereof the following:

"Here appears application for hearing under section 266 Judicial Code and motion for temporary restraining order filed August 3, 1925."

(5) Omit Subpœna and return at pp. 37 and 38 of Record, and insert in lieu thereof the following:

"Here appear subpœna issued on Bill of Complaint and return thereof."

(6) Omit Bond on Restraining Order at pp. 83 and 84 of Record, and insert in lieu thereof the following:

"Here appears Bond on Restraining Order approved by District Court."

It is further stipulated and agreed that if from oversight or omission any necessary part of the record be not thus printed that the appellant has the right to print, or may be required by the defendant in error to print, any further or additional portions thereof.

It is hereby stipulated and agreed that both appellant and appellee waive any right to further reduce or diminish [fol. 115 & 116] the printed record and request that the record be at once printed.

Dated January 29th, 1926.

Ralph W. Jackman, H. M. Wilkie, Oscar T. Toebaas, Counsel for Plaintiff and Appellant. Herman L. Ekern, Attorney General, Counsel for Defendant and Appellee.

[fol. 117] [File endorsement omitted.]

Endorsed on cover: File No. 31,660. Western Wisconsin D. C. U. S. Term No. 937. Clark Motor Company, appellant, vs. W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin. Filed February 1st, 1926. File No. 31,660.